

Procedural Guide for Pro Se Litigants



THIS INFORMATION IS PROVIDED MERELY AS A GUIDE TO PRO SE LITIGANTS. YOU SHOULD NOT RELY ON THIS INFORMATION ALONE. MOREOVER, ANY COMPLAINT MAY BE SUBJECT TO DISMISSAL ON A VARIETY OF GROUNDS.

March 20, 2001

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

PROCEDURAL GUIDE FOR PRO SE LITIGANTS

Generally, subject matter jurisdiction is based on one or more of the following: (1) A civil action in which the United States or an agency or department thereof is named as a defendant; (2) a civil action which arises under the Constitution, laws or treaties of the United States; or (3) when diversity of citizenship exists and the amount in controversy exceeds \$75,000.00.

A civil action is commenced by filing a complaint with the court. You must submit an original and four copies for the court and one copy for each defendant you name. For example, if you named two defendants you must submit the original and six copies of the complaint. You should also keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original.

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, the complaint should contain (1) a short plain statement of the basis of the court's jurisdiction, (2) a short plain statement of the claim, and (3) a demand for judgment for the relief sought. Rule 10 directs that the names of all the parties be included in the title of the action. See the attached basic format to be followed in drafting your complaint.

Your complaint must be legibly handwritten or typewritten on 8 ½" x 11" paper. You, the plaintiff, must sign the last page of your complaint as well as all other pleadings and documents you submit for filing with the court.

In order for your complaint to be filed, it must be accompanied by the filing fee of \$150.00. If you are indigent and unable to pay the filing fee, you may petition the court to proceed *in forma pauperis*. A blank petition for this purpose is attached. An original and one copy of the petition should be submitted with your complaint. However, your complaint will not be filed until your petition is granted.

Rule 4 of the Federal Rules of Civil Procedure, as revised effective December 1, 1993, governs service of a complaint. If a summons is presented to the Clerk, and it is in proper form, it will be issued and the summons will be mailed to you. You will be responsible for the prompt service of the summons and complaint upon defendants in accordance with the procedures set forth in F.R.Civ.P. 4. If you are given leave to proceed *in forma pauperis*, the United States Marshal will complete service upon the defendants. The United States Marshal may require you to give additional information to enable the Marshal to complete service of the summons and complaint upon defendants.

If you are notified that the *in forma pauperis* petition is denied by the court, you will be required to pay the filing fee in order for the complaint to be filed and your action to be commenced.

CAMDEN CLERK'S OFFICE

Mitchell H. Cohen U.S. Courthouse
One John F. Gerry Plaza, P.O. Box 1297
Fourth & Cooper Streets, Room 1050
Camden, New Jersey 08101

NEWARK CLERK'S OFFICE

Martin Luther King Jr. Federal Bldg.
& U.S. Courthouse
50 Walnut Street, P.O. Box 419
Newark, New Jersey 07101

TRENTON CLERK'S OFFICE

Clarkson S. Fisher U.S. Courthouse
402 East State Street
Room 2020
Trenton, New Jersey 08608

The United States District Court, District of New Jersey Web Site can be found at: pacer.njd.uscourts.gov

ATTACHMENTS:

- (a) Glossary of Terms
- (b) Sample Complaint
- (c) Administrative Office Forms:

Form Number	Description
JS 44	Civil Cover Sheet
AO 440	Summons in a Civil Action
AO 398	Notice of Lawsuit
AO 399	Waiver of Service
AO 240	Application to Proceed <i>In Forma Pauperis</i>

- (d) Federal Rules of Civil Procedure:

Rule Number	Description
Rule 3	Commencement of Action
Rule 4	Summons
Rule 5	Service of Filing of Pleadings & Other Papers
Rule 6	Time
Rule 7	Pleadings Allowed; Form of Motions
Rule 8	General Rules of Pleading
Rule 9	Pleading Special Matters
Rule 10	Form of Pleadings
Rule 11	Signing of Pleadings, Motions, Other Papers
Rule 12	Defenses and Objections
Rule 13	Counterclaim and Cross-Claim
Rule 14	Third-Party Practice
Rule 15	Amended and Supplemental Pleadings
Rule 16	Pretrial Conference
Rule 26	General Provisions Governing Discovery
Rule 84	Forms

(e) District of New Jersey Local Civil Rules:

a. FILING OF PAPERS, FORM OF PLEADINGS:

Rule Number	Description
Rule 5.1	Service of Filing of Pleadings & Other Papers
Rule 8.1	Pleading Damages
Rule 10.1	Form of Pleadings
Rule 11.1	Signing of Pleadings
Rule 11.2	Verification of Petitions
Rule 38.1	Jury Demand

b. PAYMENT OF FEES:

Rule Number	Description
Rule 54.3	Prepayment of Clerk's and Marshal's Fees

c. INFORMATION AS TO DISCOVERY:

Rule Number	Description
Rule 26.1	Discovery

d. CASE ALLOCATION AND JUDGE ASSIGNMENT:

Rule Number	Description
Rule 40.1	Allocation and Assignment of Cases

e. DISMISSAL OF INACTIVE CASES:

Rule Number	Description
Rule 41.1	Dismissal of Inactive Cases

**f. MOTION PRACTICE, EMERGENCY APPLICATIONS,
HABEAS PETITIONS**

Rule Number	Description
Rule 7.1	Application and Motion Practice
Rule 7.2	Affidavits and Briefs
Rule 37.1	Discovery Motions
Rule 56.1	Summary Judgment Motions
Rule 65.1	Applications for Emergency Relief
Rule 78.1	Motion Days
Rule 79.2	Briefs Part of Public Record
Rule 81.2	Habeas Corpus Motions under 28 U.S.C. §2255 in Non-Death Penalty Cases
Rule 81.3	Habeas Corpus Motions under 28 U.S.C. §2255 in Death Penalty Cases

(f) Court's Appendices:

Appendix Letter	Description
Appendix F	Transcript Rates
Appendix K	Schedule of Fees

GLOSSARY

ADVERSARY PROCESS —the method courts use to resolve disputes; through the adversary process, each side in a dispute presents its case as persuasively as possible, subject to the rules of evidence, and an independent fact finder, either judge or jury, decides for one side or the other.

ANSWER —the formal written statement by a defendant responding to a complaint and setting forth the grounds for defense.

APPEAL —a request, made after a trial, asking another court (usually the court of appeals) to decide whether the trial was conducted properly. To make such a request is “to appeal” or “to take an appeal.”

ARRAIGNMENT (a-RAIN-ment) —a proceeding in which an individual who is accused of committing a crime is brought into court, told of the charges, and asked to plead guilty or not guilty.

BANKRUPTCY —refers to federal statutes and judicial proceedings involving persons or businesses that cannot pay their debts and thus seek the assistance of the court in getting a “fresh start.” Under the protection of the bankruptcy court, debtors may “discharge” their debts, perhaps by paying a portion of each debt.

BENCH TRIAL —a trial without a jury, in which the judge decides the facts.

BRIEF —a written statement submitted by the lawyer for each side in an appellate case that explains to the judges why they should decide the case in favor of that lawyer’s client.

CASE LAW —the law as laid down in the decisions of the courts; the law in cases that have been decided.

CHAMBERS —the offices of a judge.

CHIEF DISTRICT JUDGE —the judge who has primary responsibility for the administration of the district court, but also decides cases; chief judges are determined by seniority.

CLERK OF COURT —an officer appointed by the court to work with the chief judge in overseeing the court’s administration, especially to assist in managing the flow of cases through the court.

COMPLAINT —a written statement by the person starting a lawsuit; the complaint states the wrongs allegedly committed by the defendant.

CONTRACT —an agreement between two or more persons that creates an obligation to do or not to do a particular thing.

COUNSEL —a lawyer or a team of lawyers; the term is often used during a trial to refer to lawyers in the case.

COURT —an agency of government authorized to resolve legal disputes. Judges sometimes use “court” to refer to themselves in the, third person, as in “the court has read the pleadings.

COURT REPORTER —a person who makes a word-for-word record of what is said in court and produces a transcript of the proceeding if requested to do so.

COURTROOM DEPUTY or CLERK —a court employee who assists the judge by keeping track of witnesses, evidence, and other trial matters.

CROSS- (and RE-CROSS-)

EXAMINATION —questions asked by lawyers of witnesses called by their opponents.

DAMAGES —money paid by defendants to successful plaintiff in civil cases to compensate the plaintiffs for their injuries.

DEFENDANT —in a civil suit, the person complained against; in a criminal case, the person accused of the crime.

DIRECT (and RE-DIRECT)

EXAMINATION —questions asked by lawyers of witnesses they have asked to come to court in order to bring out evidence for the fact finder.

DISCOVERY —lawyers' examination, before trial, of facts and documents in possession of the opponents, to help the lawyers prepare for trial.

EN BANC —French for “in the bench” or “full bench.” The term refers to a session in which the entire membership of the court participates in the decision rather than the regular quorum. The U.S. courts of appeals usually sit in panels of three judges, but for important cases may expand the bench to a larger number, and they are then said to be sitting en banc.

EVIDENCE —information in testimony or in documents that is presented to persuade the fact finder (judge or jury) to decide the case for one side or the other.

FELONY —a crime that carries a penalty of more than a year in prison.

GOVERNMENT—as it is used in federal

criminal cases, “government” refers to the lawyers in the U.S. attorney’s office who are prosecuting the case.

GRAND JURY —a body of citizens who listen to evidence of criminal activity presented by the government in order to determine whether there is enough evidence to justify filing an indictment. Federal grand juries consist of 23 persons and serve for about a year.

HEARSAY —evidence that is presented by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay evidence is usually not admissible as evidence in the trial.

IMPEACHMENT—(1) the process of charging someone with a crime (used mainly with respect to the constitutional process whereby the House of Representatives may IMPEACH high officers of the government for trial in the Senate); (2) the process of calling something into question, as in “impeaching the testimony of a witness.”

INDICTMENT (in-DITE-ment) —the formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; used primarily for felonies.

INFORMATION —a formal accusation by a government attorney that the defendant committed a misdemeanor.

INSTRUCTIONS —the judge’s explanation to the jury, before it begins deliberations, of the questions it must answer and the law governing the case.

JUDGE —a government official with authority to decide lawsuits brought before courts.

JUDICIAL REVIEW —this term typically refers to the authority of a court, in a case involving either a law passed by a legislature or an action by an executive branch officer or employee, to determine whether the law or action is inconsistent with a more fundamental law, namely the Constitution, and to declare the law or action invalid if it is inconsistent. Although judicial review is usually associated with the United States Supreme Court, it can be, and is, exercised by all courts. Judicial review sometimes means a form of appeal to the courts for review of findings of fact or of law by an administrative body.

JURISDICTION —(1) the legal authority of a court to hear and decide a case; (2) the geographic area over which the court has authority to decide cases.

LAWSUIT —an action started by a plaintiff against a defendant based on a complaint that the defendant committed a crime or failed to perform a legal duty.

LITIGANTS—see PARTIES.

MAGISTRATE —in federal court, the U.S. magistrate is a judicial officer who assists the district judges in getting cases ready for trial. Magistrates also may decide some criminal trials and may decide civil trials when both parties agree to have the case heard by a magistrate instead of a judge. More generally, the term refers to various public officers, often judicial officers with less authority than federal magistrates.

MISDEMEANOR —usually a petty offense, a less serious crime than a felony.

OPINION —a judge’s written explanation of a decision in a case. An **OPINION OF THE COURT** explains the decision of the court or of a majority of the judges. A

DISSENTING OPINION is an explanation by one or more judges of why they believe the decision or opinion of the court is wrong. A **CONCURRING OPINION** agrees with the decision of the court but offers further comment.

ORAL ARGUMENT —in appellate cases, an opportunity for the lawyers for each side to summarize their position for the judges and answer the judges’ questions.

PANEL —(1) in appellate cases, a group of three judges assigned to decide the case; (2) in the process of jury selection, the group of potential jurors brought in for voir dire.

PARTIES —the plaintiff(s) and defendant(s) to a lawsuit and their lawyers.

PETIT JURY (or TRIAL JURY) —a group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal criminal juries consist of 12 persons (sometimes with 1 or 2 alternate jurors in case 1 of the 12 cannot continue). Federal civil juries usually consist of 6 persons, with alternates. “Petit” is French for “small,” thus distinguishing the trial jury from the larger grand jury.

PLAINTIFF —the person who files the complaint in a civil lawsuit.

PLEA —in a criminal case, the defendant’s statement pleading “guilty” or “not guilty” of the charges.

PLEADINGS —in a civil case, the written statements of the parties stating their position about the case.

PRECEDENT (PRE-sa-dent) —a court decision in an earlier case with facts similar to a dispute currently before a court.

PRETRIAL CONFERENCE —a meeting of the judge and lawyers to decide which matters are in dispute and should be presented to the jury, to review evidence and witnesses to be presented, to set a timetable for the case, and sometimes to discuss settlement of the case.

PRO SE (pro SAY) —a Latin term meaning “on one’s own behalf”; in courts, it refers to persons who try their own cases without lawyers. A person who does that is sometimes called “a Pro Se.”

PROSECUTE —to charge someone with a crime or a civil violation and seek to gain a criminal conviction or a civil judgment.

RECORD —a written account of all the acts and proceedings in a lawsuit.

REMAND —when an appellate court sends a case back to a lower court for further proceedings.

REVERSE —when an appellate court sets aside the decision of a lower court because of an error. A REVERSAL is often followed by a remand.

SETTLE —in legal terminology, when the parties to a lawsuit agree to resolve their differences among themselves without having a trial.

SIDEBAR —a conference between the judge and lawyers held out of the earshot of the jury and spectators.

STATUTE —a law passed by a legislature.

SUMMARY JUDGMENT —a decision made on the basis of statements and evidence presented for the record without any need for a trial. It is used when there is no dispute as to the facts of the case and one party is entitled to judgment as a matter of law.

TESTIMONY —evidence presented orally by witnesses during trials or before grand juries.

TRANSCRIPT —a written, word-for-word record of what was said, either in a proceeding such as a trial or during some other conversation, as in a “transcript” of a telephone conversation.

UPHOLD —when an appellate court does not reverse a lower court decision.

U.S. ATTORNEY —a lawyer appointed by the President, in each judicial district, to prosecute cases for the federal government.

VERDICT —a petit jury’s decision.

VOIR DIRE (VWAHR DEER) —the process by which judges and lawyers select a petit jury from among those eligible to serve. “Voir dire” is a legal phrase meaning “to speak the truth.”

WITNESS —a person called upon by either side in a lawsuit to give testimony before the court or jury.

Name of Court:

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Title of Action:

Your Name,

Plaintiff,

Civil Action No.

(To be supplied by the Court)

-vs-

The title must include
all defendants,

COMPLAINT

Defendant(s).

PARTIES

State your (Plaintiff) name and address.

State names and addresses of all Defendants.

JURISDICTION

A short plain statement of the grounds upon which the court's jurisdiction depends.

CAUSE OF ACTION

Make a short plain statement setting forth the facts of your case.

DEMAND

State briefly exactly what you want the court to do for you.

(Signature of Plaintiff)

FORMAT FOR A COMPLAINT

Do not submit this form. This is to be used as a Guide only.

RECEIPT #	AMOUN	APPLYING IFP	JUDGE	MAG. JUDGE
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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b.) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a) Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

District of _____

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is herewith served upon you, within _____ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE	
NAME OF SERVER (<i>PRINT</i>)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the defendant. Place where served: _____ _____ </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: _____ _____ _____ </div> <div> <input type="checkbox"/> Other (specify): _____ _____ _____ </div>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 30%;"> Executed on _____ <div style="text-align: center; margin-top: 5px;">Date</div> </div> <div style="width: 60%;"> _____ <div style="text-align: center; margin-top: 5px;"><i>Signature of Server</i></div> _____ <div style="text-align: center; margin-top: 5px;"><i>Address of Server</i></div> </div> </div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) _____

as (B) _____ of (C) _____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the

(D) _____ District of _____
and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) _____ days after the date designated below as the date on which this Notice and is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, _____.

Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

A—Name of individual defendant (or name of officer or agent of corporate defendant)

B—Title, or other relationship of individual to corporate defendant

C—Name of corporate defendant, if any

D—District

E—Docket number of action

F—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

WAIVER OF SERVICE OF SUMMONS

TO: _____
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, _____, acknowledge receipt of your request
(DEFENDANT NAME)

that I waive service of summons in the action of _____,
(CAPTION OF ACTION)

which is case number _____ in the United States District Court
(DOCKET NUMBER)

for the _____ District of _____.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an

answer or motion under Rule 12 is not served upon you within 60 days after _____,
(DATE REQUEST WAS SENT)

or within 90 days after that date if the request was sent outside the United States.

(DATE)

(SIGNATURE)

Printed/Typed Name: _____

As _____ of _____
(TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

UNITED STATES DISTRICT COURT

District of _____

Plaintiff

V.

Defendant

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES AND AFFIDAVIT

CASE NUMBER: _____

I, _____ declare that I am the (check appropriate box)

☐ petitioner/plaintiff/movant ☐ other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? ☐ Yes ☐ No (If "No," go to Part 2)

If "Yes," state the place of your incarceration _____

Are you employed at the institution? _____ Do you receive any payment from the _____

Attach a ledger sheet from the institution(s) of your incarceration showing at least the past **six** months' transactions.

2. Are you currently employed? ☐ Yes ☐ No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 twelve months have you received any money from any of the following sources?

- | | | |
|---|------------------------------|-----------------------------|
| a. Business, profession or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. Rent payments, interest or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. Pensions, annuities or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. Disability or workers compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| e. Gifts or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| f. Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

4. Do you have **any** cash or checking or savings accounts? ☐ Yes ☐ No

If "Yes," state the total amount. _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value? ☐ Yes ☐ No

If "Yes," describe the property and state its value.

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

I declare under penalty of perjury that the above information is true and correct.

Date

Signature of Applicant

NOTICE TO PRISONER: A Prisoner seeking to proceed IFP shall submit an affidavit stating all assets. In addition, a prisoner must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

FEDERAL RULES OF CIVIL PROCEDURE

RULE 3. COMMENCEMENT OF ACTION

A civil action is commenced by filing a complaint with the court.

RULE 4. SUMMONS

(a) Form.

The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.

(b) Issuance.

Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

(c) Service with Complaint; by Whom Made.

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons and complaint.

(2) Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff is authorized to proceed in forma pauperis pursuant to 28 U.S.C. §§ 1915 or is authorized to proceed as a seaman under 28 U.S.C. §§ 1916.

(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h) ;

(B) shall be dispatched through first-class mail or other reliable means;

- (C) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;
- (D) shall inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of compliance and of a failure to comply with the request;
- (E) shall set forth the date on which request is sent;
- (F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and
- (G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

- (3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.
- (4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.
- (5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(e) Service Upon Individuals Within a Judicial District of the United States.

Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any judicial district of the United States:

- (1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State; or
- (2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(f) Service Upon Individuals in a Foreign Country.

Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:

- (1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

(g) Service Upon Infants and Incompetent Person.

Service upon an infant or an incompetent person in a judicial district of the United States shall be effected in the manner prescribed by the law of the state in which the service is made for the service of summons or like process upon any such defendant in an action brought in the courts of general jurisdiction of that state. Service upon an infant or an incompetent person in a place not within any judicial district of the United States shall be effected in the manner prescribed by paragraph (2)(A) or (2)(B) of subdivision (f) or by such means as the court may direct.

(h) Service Upon Corporations and Associations.

Unless otherwise provided by federal law, service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected:

(1) in a judicial district of the United States in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant, or

(2) in a place not within any judicial district of the United States in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph (2)(C)(i) thereof.

(i) Service Upon the United States, and its Agencies, Corporations, or Officers.

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2) Service upon an officer, agency, or corporation of the United States shall be effected by serving the United States in the manner prescribed by paragraph (1) of this subdivision and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer, agency, or corporation.

(3) The court shall allow a reasonable time for service of process under this subdivision for the purpose of curing the failure to serve multiple officers, agencies, or corporations of the United States if the plaintiff has effected service on either the United States attorney or the Attorney General of the United States.

(j) Service Upon Foreign, State, or Local Governments.

(1) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. §§ 1608.

(2) Service upon a state, municipal corporation, or other governmental organization subject to suit, shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(k) Territorial Limits of Effective Service.

(1) Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant

(A) who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which the district court is located, or

(B) who is a party joined under Rule 14 or Rule 19 and is served at a place within a judicial district of the United States and not more than 100 miles from the place from which the summons issues, or

(C) who is subject to the federal interpleader jurisdiction under 28 U.S.C. §§ 1335, or

(D) when authorized by a statute of the United States.

(2) If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.

(l) Proof of Service.

If service is not waived, the person effecting service shall make proof thereof to the court. If service is made by a person other than a United States marshal or deputy United States marshal, the person shall make affidavit thereof. Proof of service in a place not within any judicial district of the United States shall, if effected under paragraph (1) of subdivision (f), be made pursuant to the applicable treaty or convention, and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(m) Time Limit for Service.

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This

subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1) .

(n) Seizure of Property; Service of Summons not Feasible.

(1) If a statute of the United States so provides, the court may assert jurisdiction over property. Notice to claimants of the property shall than be sent in the manner provided by the statute or by service of a summons under this rule.

(2) Upon a showing that personal jurisdiction over a defendant cannot, in the district where the action is brought, be obtained with reasonable efforts by service of summons in any manner authorized by this rule, the court may assert jurisdiction over any of the defendant's assets found within the district by seizing the assets under the circumstances and in the manner provided by the law of the state in which the district court is located.

(a) Generally.

Process other than a summons as provided in Rule 4 or subpoena as provided in Rule 45 shall be served by a United States marshal, a deputy United States marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in Rule 4(1) . The process may be served anywhere within the territorial limits of the state in which the district court is located, and, when authorized by a statute of the United States, beyond the territorial limits of that state.

(b) Enforcement of Orders: Commitment for Civil Contempt.

An order of civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the laws of the United States may be served and enforced in any district. Other orders in civil contempt proceedings shall be served in the state in which the court issuing the order to be enforced is located or elsewhere within the United States if not more than 100 miles from the place at which the order to be enforced was issued.

RULE 5. SERVICE OF FILING OF PLEADINGS & OTHER PAPERS

(a) Service: When Required.

Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4 .

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Same: How Made.

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing

therein. Service by mail is complete upon mailing.

(c) Same: Numerous Defendants.

In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing; Certificate of Service.

All papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service, but the court may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the court or for use in the proceeding.

(e) Filing with the Court Defined.

The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. A court may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, which the Judicial Conference of the United States establishes. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rules or practices.

RULE 6. TIME

(a) Computation.

In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) Enlargement.

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time

for taking any action under Rules 50(b) and (c)(2) , 52(b) , 59(b) , (d) and (e) , 60(b) , and 74 (a), except to the extent and under the conditions stated in them.

(c) Unaffected by Expiration of Term.

[Rescinded Feb. 28, 1966, eff. July 1, 1966.]

(d) For Motions--Affidavits.

A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c) , opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) Additional Time After Service by Mail.

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 3 days shall be added to the prescribed period.

RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Pleadings.

There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14 ; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11 .

(c) Demurrers, Pleas, etc.,

Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

RULE 8. GENERAL RULES OF PLEADING

(a) Claims for Relief.

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials.

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11 .

(c) Affirmative Defenses.

In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure To Deny.

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be Concise and Direct; Consistency

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11 .

(f) Construction of Pleadings

All pleadings shall be so construed as to do substantial justice.

RULE 9. PLEADING SPECIAL MATTERS

(a) Capacity.

It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in

a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind.

In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent.

In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act.

In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment.

In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place.

For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage.

When items of special damage are claimed, they shall be specifically stated.

(h) Admiralty and Maritime Claims.

A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c) , 38(e) , 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims . If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15 . A case that includes an admiralty or maritime claim within this subdivision is an admiralty case within 28 U.S.C. §§ 1292(a)(3).

RULE 10. FORM OF PLEADINGS

(a) Caption; Names of Parties.

Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a) . In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs; Separate Statements.

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits.

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

(a) Signature.

Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of attorney or party.

(b) Representations to Court.

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions.

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not

withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) **Inapplicability to Discovery.**

Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

RULE 12. DEFENSES AND OBJECTIONS -- WHEN AND HOW PRESENTED -- BY PLEADING OR MOTION -- MOTION FOR JUDGMENT ON THE PLEADINGS [PROPOSED AMENDMENT]

(a) **When Presented.**

(1) Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer

(A) within 20 days after being served with the summons and complaint, or

(B) if service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.

(3) The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon the United States attorney of the pleading in which the claim is asserted.

(4) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters the

periods of time as follows:

- (A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; or
- (B) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented.

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19 . A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 , and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56 .

(c) Motion for Judgment on the Pleadings.

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 , and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56 .

(d) Preliminary Hearings.

The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion For More Definite Statement.

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion To Strike.

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any

redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion.

A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defense

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19 , and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a) , or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Rule 13. Counterclaim and Cross-Claim

(a) Compulsory Counterclaims.

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13 .

(b) Permissive Counterclaims.

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim.

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the United States.

These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the United States or an officer or agency thereof.

(e) Counterclaim Maturing or Acquired After Pleading.

A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim.

When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) Cross-Claim Against Co-Party.

A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties.

Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20 .

(i) Separate Trials; Separate Judgments.

If the court orders separate trials as provided in Rule 42(b) , judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 14. Third-Party Practice

(a) When Defendant May Bring in Third Party.

At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13 . Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant. The third-party complaint, if within the admiralty and maritime jurisdiction, may be in rem against a vessel, cargo, or other property subject to admiralty or maritime process in rem, in which case references in this rule to the summons include the warrant of arrest, and references to the third-party plaintiff or defendant include, where appropriate, the claimant of the property arrested.

(b) When Plaintiff May Bring in Third Party.

When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) Admiralty and Maritime Claims.

When a plaintiff asserts an admiralty or maritime claim within the meaning of Rule 9(h), the defendant or claimant, as a third-party plaintiff, may bring in a third-party defendant who may be wholly or partly liable, either to the plaintiff or to the third-party plaintiff, by way of remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences. In such a case the third-party plaintiff may also demand judgment against the third-party defendant in favor of the plaintiff, in which event the third-party defendant shall make any defenses to the claim of the plaintiff as well as to that of the third-party plaintiff in the manner provided in Rule 12 and the action shall proceed as if the plaintiff had commenced it against the third-party defendant as well as the third-party plaintiff.

Rule 15. Amended and Supplemental Pleadings

(a) Amendments.

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence.

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subverted thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments.

An amendment of a pleading relates back to the date of the original pleading when

- (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or
- (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or
- (3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint,

the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

The delivery or mailing of process to the United States Attorney, or United States Attorney's designee, or the Attorney General of the United States, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of this paragraph (3) with respect to the United States or any agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental Pleadings.

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Rule 16. Pretrial Conferences; Scheduling; Management

(a) Pretrial Conferences; Objectives.

In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

- (1) expediting the disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation, and;
- (5) facilitating the settlement of the case.

(b) Scheduling and Planning.

Except in categories of actions exempted by district court rule as inappropriate, the district judge, or a magistrate judge when authorized by district court rule, shall, after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

- (1) to join other parties and to amend the pleadings;
- (2) to file motions; and
- (3) to complete discovery.

The scheduling order may also include

- (4) modifications of the times for disclosures under Rules 26(a) and 26(e)(1) and of the extent of discovery to be permitted;
- (5) the date or dates for conferences before trial, a final pretrial conference, and trial; and

- (6) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant. A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a magistrate judge.

(c) Subjects for Consideration at Pretrial Conferences.

At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to

- (1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;
- (2) the necessity or desirability of amendments to the pleadings;
- (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;
- (4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Federal Rules of Evidence;
- (5) the appropriateness and timing of summary adjudication under Rule 56 ;
- (6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 27 through 37 ;
- (7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;
- (8) the advisability of referring matters to a magistrate judge or master;
- (9) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or local rule;
- (10) the form and substance of the pretrial order;
- (11) the disposition of pending motions;
- (12) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
- (13) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;
- (14) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c) ;
- (15) an order establishing a reasonable limit on the time allowed for presenting evidence; and
- (16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may

be discussed. If appropriate, the court may require that a party or its representatives be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) Final Pretrial Conference.

Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) Pretrial Orders.

After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) Sanctions.

If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2) (B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

Rule 26. General Provisions Governing Discovery; Duty of Disclosure [Proposed Amendment]

(a) Required Disclosures; Methods to Discover Additional Matter.

(1) Initial Disclosures.

Except to the extent otherwise stipulated or directed by order or local rule, a party shall, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on

an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Unless otherwise stipulated or directed by the court, these disclosures shall be made at or within 10 days after the meeting of the parties under subdivision (f). A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraph (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1).

(3) Pretrial Disclosures.

In addition to the disclosures required in the preceding paragraphs, a party shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(4) Form of Disclosures; Filing.

Unless otherwise directed by order or local rule, all disclosures under paragraphs (1) through (3) shall be made in writing, signed, served, and promptly filed with the court.

(5) Methods to Discover Additional Matter.

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a)(1) (C), for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits.

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General.

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations.

By order or by local rule, the court may alter the limits in these rules on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(3) Trial Preparation: Materials.

Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously

made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

RULE 84. FORMS WITH FORMS 1, 1A & 1B

The form contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

LOCAL CIVIL RULES

Civ. RULE 5.1 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service of all papers other than the initial summons and complaint shall be made in the manner specified in Fed. R. Civ. P. 5(b).

(b) Except where otherwise provided by these Rules (or the Federal Rules of Civil Procedure), proof of service of all papers required or permitted to be served shall be filed in the Clerk's office promptly and in any event before action is taken thereon by the Court or the parties. The proof shall show the date and manner of service and may be by written acknowledgment of service, by certificate of a member of the bar of this Court, by affidavit of the person who served the papers, or by any other proof satisfactory to the Court. Failure to make the required proof of service does not affect the validity of the service; the Court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to the substantive rights of any party.

(c) Except in an emergency, no papers shall be left with or mailed to a Judge for filing, but all pleadings shall be filed with the Clerk of the Court.

(d) When papers are filed, the Clerk shall endorse thereon the date and time of filing.

(e) Parties shall furnish to the Clerk forthwith, upon demand, all necessary copies of any pleading, judgment or order, or other matter of record in a cause, so as to permit the Clerk to comply with the provisions of any statute or rule. Plaintiff or plaintiff's attorney upon filing a complaint, and defendant or defendant's attorney upon filing a notice of removal pursuant to 28 U.S.C. § 1446, shall furnish to the Clerk a completed civil cover sheet and four (4) copies of such pleading in addition to any copies required to be filed under the Federal Rules of Civil Procedure. All such copies of the notice of removal shall also include a copy of all papers required to be filed under 28 U.S.C. § 1446(a). Upon receipt, the Clerk shall transmit one copy to the Judge to whom the case is assigned.

(f) Any papers received by the Clerk without payment of such fees as may be fixed by statute or by the Judicial Conference of the United States for the filing thereof shall be marked "received" and the date and time of receipt shall be noted thereon.

Source: L.Civ.R. 5.1(a) - G.R. 9.A.; L.Civ.R. 5.1(b) - G.R. 9.B.; L.Civ.R. 5.1(c) - G.R. 8.D.; L.Civ.R. 5.1(d) - G.R. 8.C.; L.Civ.R. 5.1(e) - G.R. 8.E., G.R. 10.A.

Civ. RULE 8.1 PLEADING DAMAGES

A pleading which sets forth a claim for relief in the nature of unliquidated money damages shall state in the *ad damnum* clause a demand for damages generally without specifying the amount. Upon service of a written request by another party, the party filing the pleading shall within 10 days after service thereof furnish the requesting party with a written statement of the amount of damages claimed, which statement shall not be filed except on court order. Nothing stated herein shall relieve the party filing the pleading of the necessity of alleging the requisite jurisdictional amount in controversy, where applicable.

Source: G.R. 8.G.

Civ. RULE 10.1 FORM OF PLEADINGS

(a) The initial pleading, motion, or other paper of any party filed in any cause other than criminal actions in this Court shall state in the first paragraph the street and post office address of each named party to the case or, if the party is not a natural person, the address of its principal place of business. If a pleading, motion, or other initial paper submitted for filing in a case does not contain the street and post office address of counsel, their client(s) or unrepresented parties, it may be struck by the Clerk and returned to the submitting party by the Clerk unless a statement why the client's address cannot be provided at this time is presented. Counsel and/or unrepresented parties must advise the Court of any change in their or their client's address within five days of being apprised of such change by filing a notice of said change with the Clerk. Failure to file a notice of address change may result in the imposition of sanctions by the Court.

(b) All papers to be filed in any cause or proceeding in this Court shall be plainly printed or typewritten, without interlineations or erasures which materially deface them; shall bear the docket number and the name of the Judge assigned to the action or proceeding; and shall have endorsed upon the first page the name, office, post office address, and telephone number and the initials of their first and last name, and last four digits of the social security number of the attorney of record for the filing party. All papers shall be in black lettering on reasonably heavy paper size 8.5 x 11 inches; carbon copies shall not be used.

Source: L.Civ.R. 10.1(a) - G.R. 8.A.; L.Civ.R. 10.1(b) - G.R. 8.B.

Civ. RULE 11.1 SIGNING OF PLEADINGS

In each case, the attorney of record who is a member of the bar of this Court shall personally sign all papers submitted to the Court or filed with the Clerk.

Source: G.R. 8.B.

Civ. RULE 11.2 - VERIFICATION OF PETITIONS AND INITIAL CERTIFICATIONS

Except where otherwise provided by law, every petition shall be verified and, whenever possible, by the person on whose behalf it is presented. In case the same shall be verified by another, the affiant shall state in the affidavit the reasons such person does not make the verification and the affiant's authority for making it. The initial pleading, motion or other paper of any party filed in any case in this Court, other than a criminal action, shall be accompanied by a certification as to whether the matter in controversy is the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding, and, if so, the certification shall identify each such action, arbitration or administrative proceeding, and all parties thereto.

Source: G.R. 14.

Civ. RULE 38.1 JURY DEMAND

If a demand for jury trial under Fed. R. Civ. P. 38(b) is endorsed upon a pleading, the title of the pleading shall include the words "and Demand for Jury Trial" or the equivalent.

Source: G.R. 8.F.

Civ. RULE 54.3 PREPAYMENT OF CLERK'S AND MARSHAL'S FEES

(a) Except as otherwise directed by the Court, the Clerk shall not be required to enter any suit, file any paper, issue any process or render any other service for which a fee is prescribed by statute or by the Judicial Conference of the United States, nor shall the Marshal be required to serve the same or perform any service, unless the fee therefor is paid in advance. The Clerk shall receive any such papers in accordance with L.Civ.R. 5.1(f).

(b) In all actions in which the fees of the Clerk and Marshal are not required by law to be paid in advance, and in which a poor suitor or a seaman prevails either by judgment or settlement, no dismissal or satisfaction of judgment shall be filed or entered until all of the fees of the Clerk and Marshal are paid.

Source: G.R. 10

Civ. RULE 26.1 DISCOVERY

(a) Discovery - Generally

All parties shall conduct discovery expeditiously and diligently.

(b) Meeting of Parties, Discovery Plans, and Initial Disclosures

(1) The requirements currently codified in Fed.R.Civ.P. 26(a) and (f) pertaining to required disclosures, meetings of parties, and submission of discovery plans, shall apply to all civil cases filed after December 1, 1993 and to all civil cases pending on December 1, 1993 that have not had their initial scheduling conference prior to January 20, 1994; except that these requirements shall not apply to those civil cases described in L.Civ.R. 72.1(a)(3)(C) in which scheduling conferences are not normally held, unless the judicial officer otherwise directs. The judicial officer may modify or suspend these requirements in a case for good cause.

(2) The initial meeting of parties as required in Fed. R. Civ. P. 26(f) shall be convened at least 14 days before the initial scheduling conference, and the proposed discovery plan under Fed. R. Civ. P. 26(f)(1)-(4) shall be generated at that meeting and delivered to the Magistrate Judge within 10 days after the meeting of parties. Discussion at the initial meeting shall address, and the resulting plan shall include: (a) the issues in Fed. R. Civ. P. 26(f)(1)-(4); (b) bifurcation (e.g., liability from damages; statute of limitations before other issues); (c) dates for filing of dispositive motions and for trial; and (d) whether the case is one which might be resolved in whole or in part by voluntary arbitration (pursuant to L.Civ.R. 201.1 or otherwise), mediation (pursuant to L.Civ.R. 301.1 or otherwise), appointment of a special master or other special procedure. The parties shall make their initial disclosures under Fed. R. Civ. P. 26(a)(1) within 10 days after the initial meeting of the parties, unless otherwise stipulated or directed by the Court. Such discovery plans and disclosures shall not be filed with the Clerk.

(c) Discovery Materials

(1) Initial, expert and pretrial disclosure materials under Fed. R. Civ. P. 26(a)(1) and 26(a)(2), transcripts of depositions, interrogatories and answers thereto, requests for production of documents or to permit entry onto land and responses thereto, and requests for admissions and answers thereto shall not be filed until used in a proceeding or upon order of the Court. However, all such papers must be served on other counsel or parties entitled thereto under Fed. R. Civ. P. 5 and 26(a)(4).

(2) Pretrial disclosure materials under Fed. R. Civ. P. 26(a)(3) shall be incorporated by reference into the order entered after any final pretrial conference under Fed. R. Civ. P. 16(d).

(3) In those instances when such discovery materials are properly filed, the Clerk shall place them in the open case file unless otherwise ordered.

(4) The party obtaining any material through discovery is responsible for its preservation and delivery to the Court if needed or ordered. It shall be the duty of the party taking a deposition to make certain that the officer before whom it was taken has delivered it to that party for preservation and to the Court as required by Fed. R. Civ. P. 30(f)(1) if needed or so ordered.

Source: L.Civ.R. 26.1(a) - G.R. 15.E. 1; L.Civ.R. 26.1(b) - G.R. 15.B.1-2; L.Civ.R. 26.1(c) - G.R. 15.G.

Civ. RULE 40.1 ALLOCATION AND ASSIGNMENT OF CASES

(a) **Allocation.** Each civil case shall be allocated by the Clerk of the Court to Camden, Newark or Trenton at the time it is commenced. The Clerk shall consider the residence of the defendant, the convenience of litigants, counsel and witnesses, and the place where the cause of action arose. The vicinage allocated shall be the location of trial and of all proceedings in the case, unless changed by order of the Court.

(b) Assignment

(1) After allocation, and subject to the supervision of the Chief Judge, each case shall be assigned forthwith to a Judge by the Clerk or the Deputy charged with such duty.

(2) If it appears that any matter requires immediate attention and the Judge to whom an action has been or would be assigned is not or will not be available, the Clerk or Deputy charged with such duty, under direction of the Chief Judge, shall assign the matter either permanently or temporarily to an available Judge.

(c) **Related Cases.** When a civil action: (1) relates to any property included in a case already pending in this Court; (2) grows out of the same transaction as any case already pending in this Court; or (3) involves the validity or infringement of any patent, copyright or trademark which is involved in a case already pending in this Court, counsel shall at the time of filing the action inform the Clerk of such fact. Whenever possible, such action shall be assigned to the same Judge to whom the pending related action is assigned.

(d) **Notice and Objection.** Promptly after allocation and assignment of a civil case, the Clerk shall notify both the parties or their counsel and the Judge of such allocation and assignment. Objections to either the allocation or the assignment of a civil case shall be made before the Chief Judge, on notice to opposing counsel and to the Judge to whom the case has been assigned.

(e) **Reallocation and Reassignment.** Disposition of any objections submitted under paragraph (d) above, and any other reallocation or reassignment of any case, shall be upon order of the Chief Judge.

Source: L.Civ.R. 40.1(a) - G.R. 11.A.; L.Civ.R. 40.1(b) - G.R. 11.B.; L.Civ.R. 40.1(c) - G.R. 11.C.; L.Civ.R. 40.1(d) - G.R. 11.D.; L.Civ.R. 40.1(e) - G.R. 11.F.

Civ. RULE 41.1 DISMISSAL OF INACTIVE CASES

(a) Civil cases, other than bankruptcy matters, which have been pending in the Court for more than 120 days without any proceedings having been taken therein must be dismissed for lack of prosecution by the Court (1) on its own motion, or (2) on notice from the Clerk to all parties who have appeared, unless good cause is shown with the filing of an affidavit from counsel of record or the unrepresented party. Notice shall be provided by the Clerk

of either action contemplated above under sub-paragraphs (1) and (2) to counsel, their client(s) and/or unrepresented persons who have appeared.

(b) When a case has been settled, counsel shall promptly notify the Clerk and the Court, thereafter confirming the same in writing. Within 15 days of such notification, counsel shall file all papers necessary to terminate the case. Upon failure of counsel to do so, the Clerk shall prepare an order for submission to the Court dismissing the action, without costs, and without prejudice to the right to reopen the action within 60 days upon good cause shown if the settlement is not consummated.

Civ. RULE 7.1 APPLICATION AND MOTION PRACTICE

(a) No Prefiling Applications

No application will be entertained by a Judge in any action until the action has been filed, allocated and assigned.

(2) Motion Practice - Dispositive and Complex Motions

Unless a Judge advises the attorneys in a particular case, or in all his or her civil cases, that all motions, regardless of their complexity and the relief sought, shall be presented and defended in the manner set forth in L.Civ.R. 7.1(c) and (d) below, dispositive motions and other motions presenting complex legal or factual issues shall be presented and defended in the manner prescribed in Appendix N to these Rules, which shall supersede any conflicting provisions in these Local Civil Rules. However, said procedure may not be used for any motions specifically excluded in Appendix N itself.

(3) Motion Practice - Scheduling

(1) Except as otherwise provided in L.Civ.R. 7.1(b), all applications other than applications under L.Civ.R. 65.1 by notice of motion or otherwise shall be made returnable on a regular argument day before the Judge to whom the case has been assigned.

(2) If a motion is noticed for any day other than a regular argument day, unless such day has been fixed by the Court, the Clerk shall list the hearing for the next regular argument day and notify all counsel of the change in date.

(3) Unless otherwise ordered by the Court, the return day of all motions shall not be later than the second available motion day subsequent to the filing of the motion.

(D) Motion Practice - Briefs

(1) No application will be heard unless an original and one copy of the moving papers and a brief prepared in accordance with L.Civ.R. 7.2, or a statement that no brief is necessary and the reasons therefor, and proof or acknowledgment of service of the brief or statement and the moving papers on opposing counsel are received at the Clerk's office at the place of allocation of the case at least 24 days prior to the date noticed for argument. The brief shall be a separate document for submission to the Court, not attached to the moving papers, and shall note the date for argument on the cover page.

(2) No argument in opposition to the application will be heard unless an original and one copy of an answering brief, specifying the date for argument on the cover page, or a statement that no brief is necessary and the reasons therefor, with proof or acknowledgment of service thereof on opposing counsel is received at the Clerk's office at the place of allocation of the case at least 14 days prior to the date originally noticed for argument, unless the Court

otherwise orders.

(3) If the moving party chooses to submit a reply brief, an original and one copy of that brief specifying the date for argument on the cover page, with proof of acknowledgment of service thereof on opposing counsel, must be delivered to the Clerk's office at the place of allocation of the case at least seven days prior to the date originally noticed for argument.

(4) Immediately on receipt of briefs, the Clerk shall deliver them to the Judge to whom the case has been assigned, except that the Clerk shall reject any brief not received within the time specified by this Rule unless otherwise ordered by the Court.

(5) Motion Practice - Required Papers

(1) All motions filed shall have annexed thereto a proposed order. In the event the proposed order is not adequate, the prevailing party, upon direction of the Court, shall submit an order within five days of the ruling on the motion on notice to his or her adversary. Unless the Court otherwise directs, if no specific objection to that order with reasons therefor is received within seven days of receipt by the Court, the order may be signed. If such an objection is made, the matter may be listed for hearing at the discretion of the Court.

(2) Upon filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or other pleading requiring leave of Court, the movant shall attach to the motion a copy of the proposed pleading or amendments and retain the original until the Court has ruled. If leave to file is granted, the movant shall file the original forthwith.

(f) Cross-Motions

A cross-motion related to the subject matter of the original motion may be filed by the responding party together with that party's opposition and may be noticed for hearing on the same date as the original motion, as long as the responding papers are timely filed. Upon the request of the original moving party, the Court may enlarge the time for filing a reply or a response to the subsequent motion and continue the noticed hearing date.

(g) Motions for Reargument

A motion for reargument shall be served and filed within 10 days after the entry of the order or judgment on the original motion by the Judge or Magistrate Judge. There shall be served with the notice a brief setting forth concisely the matters or controlling decisions which counsel believes the Judge or Magistrate Judge has overlooked. No oral argument shall be heard unless the Judge or Magistrate Judge grants the motion and specifically directs that the matter shall be reargued orally.

Source: L.Civ.R. 7.1(a) - G.R. 12.E.; L.Civ.R. 7.1(b)(1) - G.R. 12.C. (paragraph 1); L.Civ.R. 7.1(b)(2) - G.R. 12.C. (paragraph 4); L.Civ.R. 7.1(b)(3) - G.R. 12.C. (paragraph 3); L.Civ.R. 7.1(c) - G.R. 12.C. (paragraphs 5-8); L.Civ.R. 7.1(d)(1) - G.R. 12.C. (paragraph 9); L.Civ.R. 7.1(d)(2) - G.R. 12.H.; L.Civ.R. 7.1(e) - G.R. 12.C. (paragraph 10); L.Civ.R. 7.1(f) - G.R. 12.N.; L.Civ.R. 7.1(g) - G.R. 12.I.

Civ. RULE 7.2 AFFIDAVITS AND BRIEFS

(a) Affidavits shall be restricted to statements of fact within the personal knowledge of the affiant. Argument of the facts and the law shall not be contained in affidavits. Legal arguments and summations in affidavits will be disregarded by the Court and may subject the affiant to appropriate censure, sanctions or both.

(b) Any brief shall include a table of contents and a table of authorities and shall not exceed 40 ordinary typed or printed pages (15 pages for any reply brief submitted under L.Civ.R. 7.1(d) and any brief in support of a motion for reargument submitted under L.Civ.R. 7.1(g)), excluding pages required for the table of contents and authorities. Briefs of greater length will only be accepted if special permission of the Judge or Magistrate Judge is obtained prior to submission of the brief.

(c) all briefs shall be in black lettering on reasonably heavy paper size 8.5 x 11 inches. All margins shall be not less than one-inch on sides, top, and bottom.

(d) Each page of a brief shall contain double-spaced text and/or single spaced footnotes or inserts. Typeface shall be in 12-point non-proportional font (such as Courier New 12) or an equivalent 14-point proportional font (such as Times New Roman 14). If a 12-point proportional font is used instead, the page limits shall be reduced by 25 percent (e.g., the 40 page limit becomes 30 pages in this font). Footnotes shall be printed in the same size of type utilized in the text.

Source: L.Civ.R. 7.2(a) - G.R. 27.A.; L.Civ.R. 7.2(b) - G.R. 27.B.

Civ. RULE 37.1 DISCOVERY MOTIONS

(a) Conference to Resolve Disputes

(1) Counsel shall confer to resolve any discovery dispute. Any such dispute not resolved shall be presented by telephone conference call or letter to the Magistrate Judge. This presentation shall precede any formal motion.

(2) Cases in which a party appears *pro se* shall not be subject to L.Civ.R. 37.1(a)(1) unless the Magistrate Judge so directs. In such cases discovery disputes shall be presented by formal motion consistent with L.Civ.R. 37.1(b).

(b) Discovery Motions

(1) Discovery motions must be accompanied by an affidavit certifying that the moving party has conferred with the opposing party in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the Court and that the parties have been unable to reach agreement. The affidavit shall set forth the date and method of communication used in attempting to reach agreement.

(2) Discovery motions shall have annexed thereto copies of only those pertinent portions of depositions, interrogatories, demands for admission and responses, etc., which are the subject matter of the motion.

(3) L.Civ.R. 7.1 shall apply to discovery motions, except that the following schedule shall be followed. No such motion shall be heard unless the appropriate papers are received at the Clerk's office, at the place of allocation of the case, at least 24 days prior to the date noticed for argument. No opposition shall be considered unless appropriate answering papers are received at the Clerk's office, at the place of allocation of the case, and a copy thereof delivered to the Magistrate Judge to whom the motion is assigned, at least 14 days prior to the date originally noticed for argument, unless the Magistrate Judge otherwise directs. No reply papers shall be allowed except with the

permission of the Magistrate Judge. Unless oral argument is to be heard under L.Civ.R. 37.1(b)(4), the Magistrate Judge may decide the motion on the basis of the papers received when the deadline for submitting opposition has expired.

(4) No oral argument shall be heard except as permitted expressly by the Magistrate Judge assigned to hear the motion. In the event oral argument is required, the parties shall be notified by the Court. Oral argument may be conducted in open court or by telephone conference, at the discretion of the Magistrate Judge. Any party who believes that a discovery motion requires oral argument shall request it in the notice of motion or in response to the notice of motion, and so notify the Court in writing at the time the motion or opposition thereto is filed.

Source: L.Civ.R. 37.1(a) - G.R. 15.E.2-3; L.Civ.R. 37.1(b) - G.R. 15.F.

Civ. RULE 56.1 SUMMARY JUDGMENT MOTIONS

On motions for summary judgment, each side shall furnish a statement which sets forth material facts as to which there exists or does not exist a genuine issue. Briefs submitted upon such motions regarding review of Social Security matters shall be governed by L.Civ.R. 9.1.

Source: G.R. 12.G.

Civ. RULE 65.1 APPLICATIONS FOR EMERGENCY RELIEF

(a) Any party may apply for an order requiring an adverse party to show cause why a preliminary injunction should not issue, upon the filing of a verified complaint or verified counterclaim or by affidavit during the pendency of the action. No order to show cause to bring on a matter for hearing will be granted except on a clear and specific showing by affidavit or verified pleading of good and sufficient reasons why a procedure other than by notice of motion is necessary. An order to show cause which is issued at the beginning of the action may not, however, serve as a substitute for a summons which shall issue in accordance with Fed. R. Civ. P. 4. The order to show cause may include temporary restraints only under the conditions set forth in Fed. R. Civ. P. 65(b).

(b) Applications for orders to show cause, and for consent and *ex parte* orders, shall be made by delivering the proposed orders and supporting papers to the Clerk, who shall promptly deliver each application to the Judge to whom the case has been assigned. No application will be entertained by a Judge in any action until the action has been filed, allocated and assigned.

(c) The order shall provide for service upon the opposing party of the order together with all supporting papers, as specified by the Court.

(d) All applications for provisional remedies or a writ of *habeas corpus* or any other emergency relief may be made at any time to the Judge to whom the case has been assigned.

Source: L.Civ.R. 65.1(a) - G.R. 12.A., paragraph 1; L.Civ.R. 65.1(b), sentence 1 - G.R. 12.A. (paragraph 2); L.Civ.R. 65.1(b), sentence 2 - G.R. 12.E.; L.Civ.R. 65.1(c) - G.R. 12.A., paragraph 3; L.Civ.R. 65.1(d) - G.R. 12.B.

Civ. RULE 78.1 MOTION DAYS

Except during vacation periods of the Court, the regular argument days are: Camden, the first and third Friday of each month; Newark, the second and fourth Monday of each month; Trenton, the first and third Monday of each month. Unless the Court directs otherwise, it will convene at 10:00 A.M. on argument days. Whenever a regular argument day falls on a holiday, the argument will be heard on the following non-holiday except in Camden where

it will be heard on the preceding non-holiday.

Source: G.R. 12.C. (paragraph 2).

Civ. RULE 79.2 BRIEFS PART OF PUBLIC RECORD

Although not filed with the Clerk, all briefs, unless otherwise ordered by the Court, shall constitute parts of the public record, and it is the policy of the Court that counsel should, if reasonably feasible, provide to the media and members of the public access to a copy of the submitted briefs in pending actions for the purpose of review or copying at the requesting party's expense.

Source: G.R. 12.M.

Civ. RULE 81.2 PETITIONS FOR HABEAS CORPUS AND MOTIONS UNDER 28 U.S.C. § 2255 IN NON-DEATH PENALTY CASES.

(a) Unless prepared by counsel, petitions to this Court for a writ of *habeas corpus* and motions under 28 U.S.C. §2255 shall be in writing (legibly handwritten in ink or typewritten), signed by the petitioner or movant, on forms supplied by the Clerk. When prepared by counsel, the petition or motion shall follow the content of the forms.

(b) If the petition or motion is presented *in forma pauperis* it shall include an affidavit (attached to the back of the form) setting forth information which establishes that the petitioner or movant is unable to pay the fees and costs of the proceedings. Whenever a Federal, State, or local prisoner submits a civil rights complaint, petition for a writ of *habeas corpus*, or motion for relief under 28 U.S.C. §2255 and seeks *in forma pauperis* status, the prisoner shall also submit an affidavit setting forth information which establishes that the prisoner is unable to pay the fees and costs of the proceedings and shall further submit a certification signed by an authorized officer of the institution certifying (1) the amount presently on deposit in the prisoner's prison account and, (2) the greatest amount on deposit in the prisoner's prison account during the six-month period prior to the date of the certification. The affidavit and certification shall be in the forms attached to and made a part of these Rules as Appendix P. The Clerk shall reject any complaint, petition or motion which is not in full compliance with this requirement.

(c) If the prison account of any petitioner or movant exceeds \$200, the petitioner or movant shall not be considered eligible to proceed *in forma pauperis*.

(d) The respondent shall file and serve his or her answer to the petition or motion not later than 45 days from the date on which an order directing such response is filed with the Clerk, unless an extension is granted for good cause shown. The answer shall include the respondent's legal argument in opposition to the petition or motion. The respondent shall also file, by the same date, a certified copy of all briefs, appendices, opinions, process, pleadings, transcripts and orders filed in the underlying criminal proceeding or such of these as may be material to the questions presented by the petition or motion.

(e) Upon entry of an appealable order, the Clerk and appellant's counsel will prepare the record for appeal. The record will be transmitted to the Third Circuit Court of Appeals within five days after the filing of a notice of appeal from the entry of an appealable order under 18 U.S.C. §3731, 28 U.S.C. §1291 or 28 U.S.C. §1292(a)(1).

Civ. RULE 81.3 PETITIONS FOR HABEAS CORPUS AND MOTIONS UNDER 28 U.S.C. § 2255 IN DEATH PENALTY CASES.

(a) The following Local Civil Rule shall govern all petitions for a writ of habeas corpus and all motions under

28 U.S.C. § 2255 where the relief sought would affect a sentence of death previously imposed on the petitioner (hereinafter “capital case”).

(b) Any petition for a writ of habeas corpus and any motion to vacate, set aside or correct a sentence under 28 U.S.C. § 2255 in a capital case must be accompanied by a cover sheet that lists:

- (1) petitioner’s full name and prisoner number; if prosecuted under a different name or alias that name must be indicated;
- (2) name of person having custody of petitioner (warden, superintendent, etc.);
- (3) petitioner’s address;
- (4) name of trial judge;
- (5) court term and bill of information or indictment number;
- (6) charges of which petitioner was convicted;
- (7) sentence for each of the charges;
- (8) plea entered;
- (9) whether trial was by jury or to the bench;
- (10) date of filing, docket numbers, dates of decision and results of any direct appeal of the conviction;
- (11) date of filing, docket numbers, dates of decision and results of any state collateral attack on a state conviction including appeals;
- (12) date of filing, docket numbers, dates of decision of any prior federal habeas corpus or § 2255 proceedings, including appeals; and
- (13) name and address of each attorney who represented petitioner, identifying the stage at which the attorney represented the litigant.

(c) Any such petition or motion in a capital case:

- (1) must list every ground on which the petitioner claims to be entitled to habeas corpus relief (or relief under 28 U.S.C. § 2255 for federal prisoners) followed by a concise statement of the material facts supporting the claims;
 - (2) must identify at what stage of the proceedings each claim was exhausted in state court if the petition seeks relief from a state court judgment;
 - (3) must contain a table of contents if the petition is more than 25 pages;
 - (4) may contain citation to legal authorities that form the basis of the claim.
- (d) Petitioner must file, not later than 30 days after the date of the filing of the habeas corpus petition or the

motion under 28 U.S.C. § 2255, in a capital case an original and one copy of a brief in support of the relief requested, which brief shall comply with the requirements of Local Civil Rule 7.2(b). The original brief shall be filed by the Clerk and the copy forwarded by the Clerk to the Judge assigned to the case.

(e) The petition/motion and brief together must not exceed 100 pages. Any such paper shall be served upon the respondent when it is filed with the Court.

(f) Within 60 days after being served with all papers, including the brief, filed by the petitioner/movant, the respondent shall file and serve a response which:

(1) must contain a table of contents if it is more than 25 pages;

(2) must include an original and one copy of a brief complying with the requirements of Local Civil Rule 7.2(b), which the Clerk shall file and process in the manner set forth in subsection (d) above; and

(3) must include a certified copy of all briefs, appendices, opinions, process, pleadings, transcripts and orders filed in the underlying criminal proceeding or such of these as may be material to the questions presented by the petition or motion.

(g) The response and brief required in sections (f) (1) and (2) above must not exceed 100 pages.

(h) Any reply to the response must be filed and served within 21 days of the filing of the response and may not exceed 30 pages.

(i) Upon motion (with notice to all adverse parties) and for good cause shown, the Judge may extend the page limits for any document.

(j) Upon motion (with notice to all adverse parties) and for good cause shown, the Judge may extend the time for filing any document. This provision does not enlarge the power of the Judge to extend the time for filing a petition under 28 U.S.C. § 2254 or a motion under 28 U.S.C. § 2255 beyond that permitted by applicable statutory and case law.

(k) All documents filed by any party under this rule must be succinct and must avoid repetition.

(l) Each petitioner in any habeas corpus proceeding or motion under 28 U.S.C. § 2255 in which the imposition of a death sentence is challenged shall file a "Certificate of Death Penalty Case" with the initial petition, motion or other pleading. This Certificate shall include the following information:

(1) names, addresses and telephone numbers of parties and counsel;

(2) if set, the proposed date of the execution of sentence; and

(3) the emergency nature of the proceedings.

(m) A Certificate of Death Penalty Case shall be filed with the Clerk by the United States Attorney for the District of New Jersey upon return of a verdict of death in a federal criminal case.

(n) Upon the entry of a warrant or order setting an execution date in any case within the geographical boundaries of this district, and in aid of this court's potential jurisdiction, the Clerk is directed to monitor the status of the execution and any pending litigation and to establish communication with all parties and relevant state and/or federal courts. Without further order of this Court, the Clerk may, prior to the filing of a petition, direct parties to lodge with this court (1) relevant portions of previous state and/or federal court records, or the entire record, and (2) pleadings, briefs, and transcripts of any ongoing proceedings. To prevent delay, the case may be assigned to a Judge, up to 14 days prior to the execution date. The identity of the Judge assigned shall not be disclosed until a petition is actually docketed.

(o) The assignment of death-penalty cases among the Judges of this Court (whether before or after a petition is docketed) shall be as follows: If habeas relief from a State conviction is sought, the Clerk shall allocate the case to the vicinage which encompasses the county in which the capital sentence was imposed and assign the case to the next District Judge on that vicinage's list of Judges to receive such cases. If relief from a federal conviction arising in this District is sought under 28 U.S.C. § 2255, the case shall be assigned to the District Judge who presided at the capital sentencing or in his or her unavailability to the next District Judge on that vicinage's list of Judges to receive such cases.

(p) In accordance with Third Circuit L.A.R. Misc. 111.3(a), at the time a final decision is entered, the court shall state whether a certificate of appealability is granted, the court must state the issues that merit the granting of a certificate and must also grant a stay pending disposition of the appeal, except as provided in 28 U.S.C. § 2262.

(q) Upon entry of an appealable order, the Clerk and appellant's counsel will prepare the record for appeal. The record will be transmitted to the Third Circuit Court of Appeals within five days after the filing of a notice of appeal from the entry of an appealable order under 18 U.S.C. § 3731, 28 U.S.C. § 1291 or 28 U.S.C. § 1292(a) (1), unless the appealable order is entered within 14 days of the date of the scheduled execution, in which case the record shall be transmitted immediately by an expedited means of delivery.

APPENDIX F. TRANSCRIPT RATES

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

In the Matter of
Transcript Rates of
Official Court Reporters

ORDER

It appearing that the Administrative Office of the U.S. Courts, by way of letter dated July 6, 2000, has authorized a 10 percent increase in rates per page for transcripts;

It is on this 26th day of September, 2000,

ORDERED that the following rates be and hereby are established for transcripts furnished by the Official Court Reporters:

	Original	First Copy to Each Party	Each Add'l Copy to the Same Party
Ordinary Transcript A transcript to be delivered within 30 calendar days after receipt of order.	\$3.30	\$.75	\$.50
Expedited Transcript A transcript to be delivered within seven calendar days after receipt of order.	4.40	.75	.50
Daily Transcript A transcript to be delivered following adjournment and prior to the normal opening hour of the Court on the following morning whether or not it actually be a court day.	5.50	1.00	.75
Hourly Transcript A transcript of proceedings ordered under unusual circumstances to be delivered within two hours.	6.60	1.00	.75

It is FURTHER ORDERED these amendments are effective September 6, 2000.

FOR THE COURT:

ANNE E. THOMPSON
Chief Judge

APPENDIX K. SCHEDULE OF FEES

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

Office of the Clerk

Schedule of Fees

The **Clerk of the District Court** is required to collect the following fees:

Commencing any civil case or proceeding other than an application for a writ of <i>habeas corpus</i>	\$150.00
Application for a writ of <i>habeas corpus</i>	5.00
Filing a notice or petition of appeal in any case-fee includes docket fee of the United States Court of Appeals	105.00
Filing a Notice of Appeal to District Judge from a Judgment of Conviction by a Magistrate Judge in a Misdemeanor Case	25.00
Certificate of Search Each Name--	20.00
Certifying any document or paper	7.00
Exemplification of any document or paper	14.00
Filing any paper not in a case or proceeding	30.00
Registration of foreign judgment	30.00
Admission of attorney to practice (including certificate)	75.00
Duplicate Attorney Certificate of Admission	20.00
Certificate of Good Standing to Practice	15.00
Copies made by Clerk (does not include certification) Per Page--	
Photographic (Xerox) copies	\$.50
Cassette Tapes of Proceedings	20.00
Comparing copies prepared by applicant (does not include certification) Per Page--	2.00
Retrieval of a Court Record from Federal Record Center or National Archives	25.00
Check Paid into the Court Which is Returned for Insufficient Funds	35.00
Commencing a civil case under Title III of Cuban Liberty and Democratic Solidarity (Liberated) Act of 1996 (This fee is in addition to the fee for commencing a civil case)	4,180.00

CHECKS AND MONEY ORDERS MAY BE MADE PAYABLE TO THE CLERK, UNITED STATES DISTRICT COURT

May 1, 1987

Amended effective December 18, 1996; April 1, 1997; January 1, 1998; February 1, 2001